

EXHIBIT 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,
Debtor.

Adv.Pro.No.
08-01789 (BRL)

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION of MORRIS SMITH, as
reported by NANCY MAHONEY, Certified Court Reporter,
RPR, CLR and Notary Public of the States of New York
and New Jersey, at the offices of BAKER HOSTETLER,
45 Rockefeller Plaza, New York, New York on Tuesday,
March 4, 2014, commencing at 10:14 a.m.

10:22:47 1 developed a personal relationship with Mr. Merkin?

10:22:49 2 A. I think that evolved over that time
10:22:53 3 period. As you get to meet the person, maybe
10:22:54 4 formally, informally, you develop somewhat of a
10:22:57 5 social relationship also.

10:22:59 6 Q. And, again, what period of time are
10:23:00 7 we talking about?

10:23:02 8 A. Late '80s, early '90s, not specific.

10:23:06 9 Q. Did there come a time that you
10:23:07 10 developed a business relationship with Mr. Merkin?

10:23:11 11 A. I guess if you're going to describe
10:23:13 12 that as a investment in his funds, is that your
10:23:16 13 description? I need clarification of that.

10:23:18 14 Q. Did you ever deal with him in a
10:23:20 15 professional capacity?

10:23:21 16 A. As far as money management, no, not
10:23:25 17 that I recall.

10:23:26 18 Q. So let me ask you about -- you
10:23:29 19 brought up investment. Did there come a time that
10:23:31 20 you decided to invest with Mr. Merkin?

10:23:33 21 A. Yes.

10:23:33 22 Q. Approximately when was that?

10:23:34 23 A. Approximately 1992.

10:23:36 24 Q. And how did you choose to invest with
10:23:38 25 Mr. Merkin?

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10:23:39 1 A. I think from speaking to him about
10:23:41 2 the investment product -- I don't have specific
10:23:43 3 recall of the conversation, but I believe it was in
10:23:47 4 1992 relating to investing in hedge funds, as I
10:23:50 5 start to -- I think in that time period is when I
10:23:53 6 started to look at investing in hedge funds.

10:23:55 7 Q. All right. So in 1992, did
10:23:58 8 Mr. Merkin describe to you any particular hedge fund
10:24:00 9 products?

10:24:00 10 A. Yeah, I believe the one that I
10:24:02 11 invested in was Ascot Partners.

10:24:05 12 Q. And did you have a conversation with
10:24:07 13 Mr. Merkin about Ascot?

10:24:09 14 A. I'm sure I did. I don't have
10:24:11 15 specific recall. I recall the general parameters,
10:24:14 16 but I don't recall specifically exactly where, what
10:24:17 17 date, et cetera.

10:24:18 18 Q. So, generally, to the best of your
10:24:20 19 recollection, what did you talk about in 1992 with
10:24:22 20 regard to Ascot Fund?

10:24:24 21 MR. STEINER: Objection to form.

10:24:25 22 A. The -- the discussion related to
10:24:29 23 exactly what the product was, and Ezra described it
10:24:34 24 that it was an option-based trading strategy, a
10:24:37 25 strategy that would never knock the socks off -- you

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10:24:41 1 know, sort of never have outlandish returns but very
10:24:45 2 strong steady returns over time. And he described
10:24:47 3 the basic strategy -- I'm not much of an options
10:24:50 4 person, but he described the basic strategies where,
10:24:54 5 you know, when he would want to -- he would be
10:24:57 6 bullish on stocks, you know, you would buy stocks
10:24:59 7 and you can write a call and buy a put to protect
10:25:02 8 your downside and you're -- when you're negative in
10:25:04 9 the market, you can do the opposite of that and you
10:25:06 10 can also be in cash. So that was his basic
10:25:08 11 strategy. And it sounded like a good alternative
10:25:11 12 use of cash. So that was probably the first time I
10:25:13 13 invested in it.

10:25:15 14 Q. And during the -- I'm asking you
10:25:19 15 prior -- during these initial conversations that
10:25:22 16 you're describing now, did there come a time that
10:25:24 17 Mr. Merkin indicated to you who would actually be
10:25:27 18 executing the strategies of Ascot?

10:25:30 19 MR. STEINER: Objection to form.

10:25:31 20 A. As far as I remember for that
10:25:33 21 conversation, I believe it was Ezra Merkin.

10:25:37 22 Q. At any time prior to your investing
10:25:39 23 with Ascot, did he indicate that Ascot Partners
10:25:42 24 would use third-party managers to implement their
10:25:44 25 strategy?

10:26:50 1 familiar with that entity?

10:26:51 2 A. Right, that was set up probably
10:26:54 3 somewhere in the 2000s.

10:26:56 4 Q. Is that also an entity that you
10:26:58 5 manage or control?

10:26:59 6 A. Yes, I'm the president.

10:27:01 7 Q. How about an entity called the Smith
10:27:04 8 Exemption Trust, are you familiar with that entity?

10:27:07 9 A. Yes.

10:27:08 10 Q. Is that also an entity that you have
10:27:10 11 -- that you manage or control?

10:27:12 12 A. My wife is the trustee.

10:27:15 13 Q. Okay. And your wife's name is?

10:27:18 14 A. Devora, D-e-v-o-r-a.

10:27:20 15 Q. Devora Smith?

10:27:22 16 A. Yes.

10:27:29 17 Q. Did you -- did there ever come a time
10:27:32 18 that you invested in any other investment products
10:27:34 19 through Mr. Merkin?

10:27:35 20 A. Yes, I invested in Gabriel Capital.
10:27:38 21 I do not know the date that that investment was
10:27:44 22 made. And then I also invested in a number of
10:27:51 23 Cerberus products which he was associated with,
10:27:55 24 depending on the product itself. I was an investor
10:27:57 25 in Abelco, which is a company that I believe he's

10:28:01 1 one of the general partners with Steve Feinberg, if
10:28:04 2 I'm not mistaken.

10:28:05 3 Q. Who is Steve Feinberg?

10:28:07 4 A. He's the -- I believe the managing
10:28:09 5 partner of Cerberus.

10:28:13 6 Q. Prior to investing in Gabriel
10:28:16 7 funds -- Gabriel Capital, did you have a
10:28:18 8 conversation with Mr. Merkin concerning the strategy
10:28:22 9 employed in that product?

10:28:23 10 A. I'm sure I did.

10:28:25 11 Q. And what, if anything, did he tell
10:28:27 12 you about Gabriel?

10:28:28 13 A. I think what was -- the investment
10:28:31 14 purpose was to invest in distressed securities, out
10:28:35 15 of favor securities, high income type of bond sort
10:28:40 16 of investments, different products like -- different
10:28:44 17 investment areas like that.

10:28:47 18 Q. Did Mr. Merkin indicate who would be
10:28:51 19 implementing Gabriel's strategy?

10:28:52 20 MR. STEINER: Objection to form.

10:28:53 21 A. Yeah, he would be the fund manager.

10:28:57 22 Q. During your conversation with
10:28:59 23 Mr. Merkin prior to investing, did Mr. Merkin
10:29:03 24 indicate that he would ever use third-party managers
10:29:05 25 to implement Gabriel's strategy?

10:37:13 1 16-year period, I'd say.

10:37:14 2 Q. Do you recall approximately how many
10:37:16 3 times you spoke to him?

10:37:17 4 A. I'm going to guess. Maybe two or
10:37:19 5 three times. I don't have specific recall to that.

10:37:23 6 Q. What, if anything, did -- let me try
10:37:26 7 to break the conversations up.

10:37:27 8 Do you recall, were you still in
10:37:31 9 Israel when you spoke to him initially after your
10:37:33 10 investment or had you come back to the United
10:37:36 11 States?

10:37:36 12 A. I used to travel back and forth. So
10:37:38 13 I don't -- my guess is, if I had a discussion about
10:37:41 14 exactly what Ascot is doing, it would have been
10:37:44 15 here, not on the phone.

10:37:45 16 Q. And you testified you returned from
10:37:46 17 Israel in 1999?

10:37:48 18 A. Correct.

10:37:49 19 Q. What did -- what, if anything, did
10:37:50 20 Mr. Merkin tell you about the strategy employed by
10:37:54 21 Ascot Fund?

10:37:54 22 A. There were no material changes as far
10:37:57 23 as the strategy goes. I don't remember -- I don't
10:38:00 24 recall him ever deviating from the strategy. He
10:38:06 25 mentioned a number -- a couple of times about

10:38:08 1 capacity constraints, but I don't remember any
10:38:11 2 changes about strategy.

10:38:13 3 Q. Let me ask you about this capacity
10:38:16 4 constraints. What -- what did he say about these
10:38:22 5 capacity constraints?

10:38:23 6 A. There were -- I remember him
10:38:25 7 mentioning at least once, maybe twice, that there
10:38:28 8 were -- he felt like there were times they were
10:38:30 9 bumping up against the limits of being able to do
10:38:32 10 the trades profitably.

10:38:33 11 Q. What did you understand that to mean?

10:38:35 12 A. The thinness of the market as far as
10:38:39 13 being able to execute the option trades related to
10:38:42 14 owning -- owning or shorting the stocks underneath.

10:38:47 15 Q. Did he ever give you any indication
10:38:49 16 of what he thought the limit of Ascot's trading
10:38:51 17 strategy in the options market were?

10:38:53 18 A. I believe I heard once the number of
10:38:55 19 about a billion dollars.

10:38:58 20 Q. During any of your conversation --
10:39:01 21 subsequent conversations with Mr. Merkin, did he
10:39:03 22 discuss how he determined when to be in or out of
10:39:07 23 the market?

10:39:07 24 MR. STEINER: Objection to form.

10:39:09 25 A. It seemed to be based on his feel in

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10:39:11 1 the market. He would occasionally ask me how I feel
10:39:14 2 about the market, since I was obviously involved, so
10:39:17 3 we would have discussions about the stock market.
10:39:20 4 That, I guess, you know, just his discussions with
10:39:22 5 other investors, et cetera and how he felt about the
10:39:25 6 environment.

10:39:25 7 Q. Did he ever discuss with you how he
10:39:28 8 got -- whether he got any reports or trading runs
10:39:32 9 from any individuals that would give him insight
10:39:34 10 into the market?

10:39:34 11 A. Yeah, he had -- I remember a person
10:39:38 12 named Ken, who I thought had worked, I think, at
10:39:43 13 Oppenheimer, because he was once -- Ezra was once
10:39:46 14 discussing the runs, the computer runs, that he was
10:39:48 15 looking to evaluate some of the trades.

10:39:50 16 Q. And what would Ken -- what, if
10:39:51 17 anything, would Ken provide to Mr. Merkin?

10:39:52 18 A. I have no idea. I just remember a
10:39:54 19 conversation -- I do remember that part of a
10:39:57 20 conversation.

10:39:58 21 Q. Did Mr. Merkin indicate what he would
10:40:00 22 do with these runs from Oppenheimer Fund?

10:40:02 23 A. Not specifically, but I'm assuming he
10:40:05 24 was using those for investment criteria.

10:40:09 25 Q. During any subsequent conversation

10:40:11 1 with Mr. Merkin, did he ever discuss who the
10:40:14 2 custodian of Ascot Fund was?

10:40:15 3 A. Yeah, the custodian he had told me
10:40:19 4 was -- for all of his assets was Morgan Stanley.

10:40:23 5 Q. And during any of these conversations
10:40:26 6 did he indicate who, in fact, was executing the
10:40:29 7 strategies --

10:40:30 8 MR. STEINER: Objection to form.

10:40:30 9 Q. -- for Ascot Fund?

10:40:31 10 A. So I'm not sure when this was, but
10:40:34 11 the name Bernie Madoff or Madoff security -- I don't
10:40:38 12 recall specifically -- came up somewhere along the
10:40:41 13 way that they were, in a sense, the executing broker
10:40:43 14 of the strategies. You know, that -- I think back
10:40:49 15 to -- that's why -- I remember the discussion about
10:40:52 16 the computer runs. That was, I'm guessing, the late
10:40:56 17 '90s, early 2000s, that's what I recalled about
10:40:59 18 that, but he had mentioned that somewhere along the
10:41:01 19 way.

10:41:01 20 Q. Let me ask you: Prior to
10:41:03 21 December 2008, were you familiar with Mr. Bernard
10:41:05 22 Madoff?

10:41:06 23 A. I never met him.

10:41:06 24 Q. Did you have an understanding of who
10:41:09 25 he was?

10:49:44 1 Go ahead.

10:49:45 2 A. He said he was going to move the
10:49:46 3 funds into specifically designated accounts by the
10:49:51 4 federal -- by the -- by the Fed, U.S. Fed, and in a
10:49:56 5 sense what would be like a direct deposit account,
10:49:59 6 which I was aware of because my mother had direct
10:50:01 7 deposit accounts, and that gave me a tremendous
10:50:04 8 amount of comfort related to all -- related to other
10:50:06 9 investments that I had that I was very concerned
10:50:08 10 about that at least these funds were going to be
10:50:11 11 protected.

10:50:11 12 Q. And after Mr. Merkin told you this,
10:50:14 13 did that information affect your decision to
10:50:17 14 liquidate your Ascot investments?

10:50:19 15 A. I didn't liquidate them.

10:50:29 16 Q. I want to -- I want to ask you some
10:50:30 17 questions about your time on the Yeshiva investment
10:50:36 18 committee.

19 A. Um-hum.

10:50:37 20 Q. Do you recall approximately when you
10:50:38 21 joined the Yeshiva investment committee?

10:50:40 22 A. 2000, roughly.

10:50:42 23 Q. Okay. And do you recall
10:50:45 24 approximately what the first meeting that you
10:50:47 25 attended was?

10:50:49 1 A. I don't -- I just don't recall.

10:50:51 2 Q. Okay. Let me show you Trustee's
10:50:54 3 Exhibit 238.

10:51:14 4 (Deposition Trustee Exhibit 238
5 marked for identification.)

10:51:17 6 BY MR. ALLEN:

10:51:17 7 Q. Do you recognize what I've just
10:51:18 8 handed to you?

10:51:20 9 A. Not specifically, but, yes -- we
10:51:22 10 typically had minutes circulated after every
10:51:26 11 meeting.

10:51:27 12 Q. And I want you to take a look at the
10:51:29 13 first page of this document.

14 A. Okay.

10:51:32 15 Q. And does this refresh your
10:51:34 16 recollection as to when the first meeting that you
10:51:36 17 attended on the investment committee of Yeshiva
10:51:40 18 University?

10:51:40 19 A. I -- I feel comfortable in saying I
10:51:43 20 was a member of the committee as of August 30th,
10:51:46 21 2000.

10:51:46 22 Q. Okay.
10:51:49 23 How did you come to join the
10:51:52 24 investment committee?

10:51:52 25 A. Ezra asked me if I would be

10:51:55 1 interested in doing that.

10:51:56 2 Q. And how long did you serve on the
10:51:58 3 committee?

10:51:58 4 A. Till, I believe, January of 2009.

10:52:02 5 Q. Now, on August 30th of 2000, who was
10:52:07 6 serving as chairman of the committee?

10:52:09 7 A. Ezra was.

10:52:10 8 Q. And did that position --

10:52:11 9 A. As far as I recall -- yeah, it says
10:52:15 10 it here, so I'm assuming so.

10:52:16 11 Q. Did that position ever change while
10:52:18 12 you were a member of the investment committee?

10:52:20 13 A. Not that I recall.

10:52:21 14 Q. Are you familiar with an individual
10:52:23 15 by the name of Robert Belfer?

10:52:25 16 A. Yeah, just from the board, correct.

10:52:27 17 Q. Is he -- was he a member of the
10:52:30 18 investment committee in 2000?

10:52:31 19 A. Yes.

10:52:31 20 Q. How about Ludwig Bravmann?

10:52:34 21 A. Yes.

10:52:35 22 Q. Was he also a member of the
10:52:37 23 investment committee?

10:52:37 24 A. Yes.

10:52:38 25 Q. David Gottesman?

11:12:47 1 as Madoff?

11:12:47 2 MR. STEINER: Objection to form.

11:12:48 3 A. Not that I recall.

11:12:49 4 Q. At any point while you were on the
11:12:50 5 investment committee, was Ascot Partners referred to
11:12:53 6 by any other name?

11:12:54 7 MR. STEINER: Objection to form.

11:12:55 8 A. Not that I recall.

11:13:04 9 Q. When did you learn that Mr. Madoff
11:13:06 10 was arrested?

11:13:09 11 A. On Thursday -- I don't recall the
11:13:11 12 exact date -- December 6th, 8th. You probably know
11:13:14 13 better than I, but ...

11:13:15 14 Q. How did you learn of his arrest?

11:13:18 15 A. I think I got a phone call from a
11:13:20 16 friend of mine.

11:13:25 17 Q. After his arrest, did you receive any
11:13:27 18 news accounts with respect to -- that concerned
11:13:30 19 Ascot or Gabriel?

11:13:32 20 A. I don't recall specific news
11:13:35 21 accounts, but I was aware from the news flow, et
11:13:38 22 cetera, that he apparently had done this incredible
11:13:42 23 Ponzi scheme.

11:13:43 24 Q. Did you send -- did there come a time
11:13:46 25 that you sent Mr. Merkin an email --

11:13:49 1 A. I don't recall --

11:13:51 2 Q. -- regarding your Gabriel investment?

11:13:53 3 A. I don't -- right, I don't recall the
11:13:55 4 specific email, but I know I was concerned.

11:13:59 5 Q. Let me show you Trustee's -- what I'm
11:14:01 6 asking to be marked as Trustee's Exhibit 243.

11:14:18 7 (Deposition Trustee Exhibit 243
11:14:18 8 marked for identification.)

11:14:24 9 A. Um-hum, okay.

11:14:26 10 Q. Do you recognize that?

11:14:27 11 A. Yeah, I'm assuming this is from me,
11:14:30 12 yes.

11:14:30 13 Q. What do you recognize it to be?

11:14:32 14 A. An email from me to Mike Autera and
11:14:36 15 Ezra Merkin.

11:14:39 16 Q. And when was that email sent?

11:14:40 17 A. December 12, the day after -- so
11:14:42 18 December 11, I'm gathering, was the date of the
11:14:45 19 arrest -- I'm not sure again. I'm -- the day of
11:14:51 20 Bernie Madoff's arrest was -- I don't recall.

11:14:54 21 Q. But when you -- but you recall -- if
11:14:58 22 I heard you correctly, you recall sending this email
11:15:00 23 the day after?

11:15:01 24 A. I'm assuming I sent this email. It's
11:15:02 25 from me.

1 Q. Okay.

11:15:03 2 A. I don't specifically remember typing
11:15:04 3 it and sending it off.

11:15:07 4 Q. Do you have any reason to doubt this
11:15:09 5 is not your email?

11:15:10 6 A. No, I have no reason to doubt this is
11:15:12 7 not true.

11:15:12 8 Q. I want to direct your attention to
11:15:15 9 the subject line of this email. It reads, "Gabriel
11:15:17 10 Capital - is ALSO affected by Madoff?"

11:15:22 11 A. Right.

11:15:23 12 Q. What did you understand that phrase
11:15:25 13 to mean?

11:15:26 14 A. That apparently I had found out
11:15:29 15 sometime after the announcement till now that
11:15:31 16 Gabriel had a certain percent of their assets that
11:15:34 17 were being managed or, I guess, had actually been
11:15:38 18 physically at Madoff Securities and that was also
11:15:41 19 gone.

11:15:43 20 Q. Was that news consistent with your
11:15:45 21 understanding of the custodian of Gabriel Capital?

11:15:52 22 MR. STEINER: Objection to form.

11:15:53 23 A. No.

11:15:54 24 Q. What was your understanding of
11:15:56 25 Madoff's role in Gabriel when you sent this email?

11:15:59 1 A. I never knew there was any role at
11:16:03 2 all.

11:16:03 3 Q. Did Mr. Merkin respond to this email?

11:16:06 4 A. I don't have any response on here, so
11:16:09 5 I -- I don't know.

11:16:12 6 Q. Did you ever have an opportunity to
11:16:14 7 speak to Mr. Merkin by telephone at any time
11:16:17 8 following Mr. Madoff's arrest?

11:16:19 9 A. I believe we spoke twice on the day
11:16:23 10 of the arrest, late that afternoon -- I don't
11:16:26 11 remember the exact time period of that -- and then I
11:16:29 12 spoke to him, I believe, on the Tuesday, I think it
11:16:32 13 was, five days later, roughly.

11:16:35 14 Q. I want to ask you specifically about
11:16:37 15 the phone call on the date of Mr. Madoff's arrest.

16 A. Um-hum.

11:16:42 17 Q. What, if anything, did you say to
11:16:44 18 Mr. Merkin during that phone call?

11:16:46 19 A. I don't remember all the specifics.
11:16:48 20 What I do recall clearly was that I didn't
11:16:53 21 understand like what happened to the money and --

11:16:58 22 Q. What -- do you recall what you said
11:17:00 23 to him?

11:17:00 24 A. I don't recall the specific
11:17:02 25 conversation, but I recall saying to him, like, you